

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA, :

Appellee, :

-v- :

JAMES RIZZIERI, :

Appellant. :

-----X

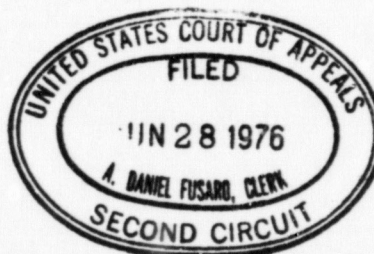
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APPENDIX TO BRIEF FOR  
APPELLANT JAMES RIZZIERI

Appeal from A Judgment of  
Conviction in The United  
States District Court For  
The Southern District of  
New York

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TABLE OF CONTENTS

Colloquy Re Rizzieri Sales. . . . .	RA1 - RA18
Ferrarone Testimony . . . . .	RA19 - RA41
Colloquy Re Multiple Conspiracy . . . . .	RA42 - RA46
Court Opinion Severing Blase. . . . .	RA47 - RA48
Eastern District Arrest and Indictment. . . . .	RA49 - RA56



(Trial resumed.)

(In the robing room.)

MR. GOLDBERGER: Your Honor, I made an application to you.

I was going over the 3500 material that Mr. Amorosa supplied us before the weekend concerning, I believe, an agent named Ferrarone or Ferrone.

THE COURT: Is he next?

MR. AMOROSA: Yes.

MR. GOLDBERGER: It appears to me from the-- material, your Honor, the Government may be intending to introduce into evidence some heroin from some sales involving Rizzieri and Ferrone and what came up in some of the materials, it appeared that Rizzieri was getting this material from a source in Long Island, which seems to be outside of the scope of the conspiracy we are trying here at

1 rkb-2

662

2 this point, and I would suggest to your Honor, from my  
3 reading of the material, we may be getting into a second or  
4 third conspiracy.

5 THE COURT: Let's see whether your concerns  
6 are appropriate.

7 MR. AMOROSA. The heroin which Rizzieri distri-  
8 buted to Ferrarone came from the Riccos and we think the  
9 proof has shown that. Rossi testified here although  
10 he stopped taking heroin from the Riccos --

11 THE COURT: What does that have to do with this  
12 question of Ferrarone and Long Island -- what is the name?

13 MR. AMOROSA: Ferrone.

14 The distribution is that Ferrone will talk  
15 about that came from Rizzieri occurred in November 1972,  
16 right in the period Rossi was saying he distributed it and  
17 Rizzieri was his partner. That distribution by the  
18 defendant Rizzieri to Ferrone began in 1972, the second  
19 distribution that he will testify to occurred in February  
20 of 1973, and Rossi has testified that although --

21 THE COURT: I don't think you are meeting Mr.  
22 Goldberger's point.

23 MR. AMOROSA: Ferrone was not told where  
24 the heroin was coming from. We are proving where the heroin  
25 was coming from by Rossi who testified that although he

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663

2 stopped taking heroin --

3 THE COURT: Certainly you have the right to  
4 prove all that. As I understood Mr. Goldberger, he said  
5 he was concerned from the 3500 material that you were going  
6 beyond that, is that right?

7 MR. JACOBS: Can I be heard since it directly  
8 concerns my client.

9 THE COURT: Any of you can be heard. I just  
10 don't understand the claim.

11 MR. GOLDBERGER: The problem is, Judge, it  
12 appears that Rizzieri is telling Ferrone in the negotiations,  
13 I can get anything I want from Long Island, that is my  
14 source.

15 THE COURT: And you claim that is a different  
16 source than the one that has been alleged in this indictment?

17 MR. GOLDBERGER: There doesn't appear to be any  
18 evidence in the case so far.

19 THE COURT: Let me ask Mr. Amorosa.

20 First of all, do you expect to ask Ferrone about  
21 Rizzieri saying that he can get stuff from Long Island  
22 and secondly, if you do, is it your claim that it is part  
23 of this conspiracy or something else?

24 MR. AMOROSA: I can't recall what Mr. Goldberger  
25 is referring to in the 3500 material. Rizzieri will testify --



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664

2 excuse me, Ferrone will testify that he received these  
3 distributions. The proof, it is our position, shows  
4 that the distributions came from the Riccos through Rizzieri  
5 to Ferrone.

6 As to the conversation that Ferrone had with  
7 Rizzieri --

8 THE COURT: Let's assume there is such a one. Do  
9 you expect your questions will bring it out?

10 MR. GOLDBERGER: Perhaps I can show you some-  
11 thing.

12 MR. JACOBS: I just showed it to Mr. Amorosa.

13 MR. GOLDBERGER: I believe it was mentioned  
14 on more than that one occasion.

15 THE COURT: One at a time.

16 Do you expect to exploit that statement?

17 MR. AMOROSA: If counsel is referring to what I  
18 have in my hand now.

19 THE COURT: Which is 3504-21 and it states  
20 in the third paragraph of the text, "After Ferrone left,  
21 Jimmie told me he had to go to Long Island to get the heroin."

22 MR. AMOROSA: That is not Ferrone's statement.

23 THE COURT: I don't care what it is. I am asking  
24 you if you expect to ask Mr. Ferrone about a conversation  
25 in which Jimmie told him to go to Long Island.

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665

MR. AMOROSA: Jimmie did not tell Ferrone that Jimmie had to go to Long Island. This is a statement from someone else. This is not a statement made by Jimmie to Ferrone. It was made to an informant.

THE COURT: Do you expect to bring out the Long Island reference here with any witness?

MR. AMOROSA: No, I don't.

MR. JACOBS: Your Honor, first let me show you 3504-3, paragraph 4, which is a statement that my client allegedly made to Ferrone which he states his normal source had dried out and the goods he sold to Ferrone were from a new source.

THE COURT: What is it you want me to comment about?

MR. JACOBS: Simply, I think the Government can prove probably that the November transaction involving my client which was not a direct sale, which was a sale by somebody else with my client sitting in the car, is part of this conspiracy, but as to the February and March transactions, your Honor, I think the proof in the case shows that my client got narcotics from somebody else and sold it to an agent. He was ultimately arrested after the second sale, prosecuted, pleaded guilty and received a ten-year sentence.



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666

2 It has nothing I submit to do with this case.  
3 The core of this case is narcotics supplied by the Riccos  
4 to Rossi and Rizzieri that was sold.

5 THE COURT: And you claim that the February were  
6 independent of this conspiracy?

7 MR. JACOBS: Yes.

8 MR. AMOROSA: Our claim is contrary to that,  
9 Judge. We already have proof in the record through  
10 the witness Rossi that after Rossi stopped taking heroin  
11 from the Riccos, Rizzieri continued to take heroin from the  
12 Riccos.

13 We will prove through another witness that will  
14 follow Ferrone that Rizzieri continued to take heroin from  
15 the Riccos.

16 THE COURT: For how long?

17 MR. AMOROSA: Until the time of his arrest by  
18 Ferrone.

19 THE COURT: After the transactions to which  
20 Mr. Jacobs referred?

21 MR. AMOROSA: Yes.

22 MR. JACOBS: This is so important --

23 THE COURT: It is very important, but it seems  
24 to me you are asking me to decide in advance of the  
25 testimony.

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667

MR. JACOBS: If your Honor later finds there is no question --

THE COURT: I don't see how I can try the case--  
I am not the jury.

MR. JACOBS: The fact he says somebody is going to say, I think we should have an offer of proof what the Government is going to prove on this.

MR. AMOROSA: Judge, in any event, assuming, and we certainly don't concede the heroin came from somebody in Long Island, but assuming it did, the proof would come in against Rizzieri anyway, it would not come in against the other defendants. This is right during the conspiratorial period.

It would come in as a similar act.

We have proven and we will supply additional proof that the heroin that Rizzieri sold to Ferrone in February came from the Riccos.

THE COURT: On that offer of proof, I don't see how I can deny it at this stage.

MR. JACOBS: I would like to know who is going to testify to that fact.

MR. AMOROSA: I will be prepared to tell counsel. The witness Mengrone who will also testify in this case.

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Colloquy Re Rizzieri Sales RA-8

668

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MR. JACOBS: That he has personal knowledge?

MR. AMOROSA: Will further corroborate the fact that the Riccos were selling heroin to Rizzieri in February and March of 1973 up until, conclusively, the time of Rizzieri's arrest by Special Agent Ferrone in March of '73.

Also, I would like to state again that Rossi has already testified that after he stopped taking heroin from the Riccos, Rizzieri told him that Rizzieri continued to take heroin from the Riccos.

MR. JACOBS: There is direct showing here, my client who is dealing with somebody, says, "My normal source dried up and I got it from somewhere else," and later on he says, "I have to go out to Long Island to get it."

THE COURT: If this was an admission, I would think it would be very important, but in the context of this discussion it is a self-serving declaration, and I can't acquit Mr. Rizzieri in advance.

MR. JACOBS: He is dealing with somebody who is undercover, he doesn't know he is an agent.

THE COURT: It's self-serving in the sense that you are now arguing that something he once said to the agent is enough on its face, almost, to say that I should acquit somebody before I hear the evidence.

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669

2 MR. JACOBS Not acquit somebody, but I submit  
3 the Government should prove the connection first.

4 If this testimony, sales to agent, comes in and  
5 the Government then does not satisfy your Honor, how can  
6 the jury wipe three sales out of their minds? Your  
7 Honor, I would think, would have to grant a mistrial.

8 THE COURT: I will have to determine that when the  
9 time comes.

10 MR. GOLDBERGER: My understanding, from reading  
11 the material, and I can't find the sheet here, is that  
12 the 3500 material indicates that Rizzieri has other sources  
13 for material, Jimmy Castelatto, at or about this time,  
14 which is a totally different source from the Riccos, as  
15 I understand it, so if the goods from the two sales --

16 THE COURT: What you are trying to do is to get  
17 me to --

18 MR. GOLDBERGER: Exclude the February-March  
19 transaction.

20 THE COURT: -- to rule on the assumption you could  
21 prove certain things which you may or may not be able to  
22 do.

23 MR. JACOBS: May I make a suggestion, that a  
24 hearing be held to determine whether there is sufficient  
25 connection to let the proof in.



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2 THE COURT: I decline to do it.

3 MR. AMOROSA: Based on the material in the record  
4 that Rizzieri told Rossi --

5 THE COURT: You mean I should hear the witnesses'  
6 testimony in advance?

7 MR. JACOBS: Just on this one point.

8 THE COURT: Ferrone is here. Is the other witness  
9 here, Mengrone?

10 MR. AMOROSA: No. He is in New York, but he is  
11 not prepared to testify at this point. I don't anticipate  
12 he will be on the witness stand today.

13 Our position is already an adequate foundation  
14 has been laid for this through the testimony of the witness  
15 Rossi.

16 MR. JACOBS: All Rossi said is that in January  
17 he stopped getting drugs and that Rizzier got it afterwards.  
18 That doesn't tie anything in with February or March.

19 THE COURT: I don't think the Government has an  
20 affirmative obligation to establish that these sales in  
21 February and March came from Ricco, as long as they do not  
22 have affirmative information that they did not come --

23 MR. JACOBS: They do, from Rizzieri and from a  
24 Government informant.

25 MR. AMOROSA: Rizzieri told that to Ferrone,

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2 assuming Ferrone testifies to that. That doesn't mean  
3 it's true. He could have been looking to mislead Ferrone.

4 MR. JACOBS: What about the Government's  
5 informant?

6 MR. AMOROSA: They could call the informant to  
7 the stand.

8 THE COURT: Gentlemen, I won't go any further.

9 MR. RICHMAN: There is another issue. I am ill.  
10 I have a virus. I came in specifically just because I am  
11 cross-examining Rossi --

12 THE COURT: Off the record.

13 (Discussion off the record)

14 THE COURT: Would you bring in Mr. Blase to  
15 confirm what you have just told me on the record.

16 (Defendant Blase present)

17 THE COURT: Mr. Blase, Mr. Richman tells me he is  
18 not well. He has come in today for the purpose of cross-  
19 examining Mr. Rossi and possibly redirect of Mr. Rossi  
20 by Mr. Amorosa, so Mr. Richman can then leave and you will  
21 then be represented by Mr. Goldberger.

22 Is that satisfactory to you?

23 DEFENDANT BLASE: Yes.

24 MR. MITCHELL: Your Honor, I went over to state  
25 court. Something happened to the judge. They told me to



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2 AFTERNOON SESSION

3 2:00 p.m.

4  
5 (In the robing room)

6 THE COURT: I want to discuss further the  
7 question that Mr. Goldberger raised this morning about the  
8 possible effect of an admission by Mr. Rizzieri.

9 I am not clear, Mr. Amorosa, whether the testimony  
10 that you propose to elicit from Mr. Ferrone will have  
11 to do with sales which the Government claims were part  
12 of this conspiracy.

13 Will you say something for the record?

14 MR. AMOROSA: That is so. We intend to elicit  
15 from Ferrone testimony that Ferrone purchased narcotics  
16 from Rizzieri which came from the Riccos.

17 The first purchase was in November. It relates  
18 to Count 4 of the indictment, specifically, November 22nd.

19 THE COURT: Am I correct in assuming, therefore,  
20 that it is the contention of the Government that this is  
21 not part of any material with regard to which Mr. Rizzieri  
22 has been tried to date; indeed, it would obviously be  
23 double jeopardy if it were.

24 MR. AMOROSA: Obviously not. Rizzieri pleaded  
25 guilty to possession of heroin with the intent to distribute

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2 but that same charge is not in this indictment. He  
3 pleaded guilty in connection with a distribution he was  
4 about to make to Mr. Ferrarone --

5 THE COURT: I don't care whether the charge is  
6 in this indictment or not; I'm talking about the subject  
7 matter.

8 MR. JACOBS: What happened was there were three  
9 transactions --

10 THE COURT: When?

11 MR. JACOBS: November 1972, February 1973,  
12 March 1973. At the March transaction Mr. Rizzieri was  
13 arrested. He was indicted in the Eastern District of New  
14 York because he was arrested in a gasoline station on  
15 Long Island -- excuse me, in Queens, at which time he had  
16 narcotics in his possession. He pleaded guilty on that  
17 charge. The Government never --

18 THE COURT: He pleaded guilty to the March  
19 transaction?

20 MR. JACOBS: Yes.

21 THE COURT: And the Government did not charge him --

22 MR. JACOBS: Not with any of the other transactions.

23 THE COURT: So he has not pleaded guilty with  
24 regard to those?

25 MR. JACOBS: But he has to the March offense.



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788

2 THE COURT: Do you propose to question Mr.  
3 Ferrarone about all three of those transactions?

4 THE COURT: Yes, we do.

5 THE COURT: All right. As to the two, they can't  
6 have formed the subject matter of any plea, or they didn't,  
7 anyway, so that I don't see any reason why you can't  
8 ask him about those if you, in good faith, believe that  
9 they constitute transactions which were part of this  
10 conspiracy. Even as to the third it may be possible,  
11 I suppose, although I haven't thought about it, for you  
12 to question him about that, but it seems to me it raises  
13 the question which Mr. Goldberger raised -- I'm not saying  
14 that he is right about it, but it raises it -- but does it  
15 not also raise now -- the question that occurs to me -- a  
16 peculiar situation for Mr. Rizzieri in which the jury  
17 would have to be told -- I'm thinking out loud at the  
18 moment, not making a ruling -- later on that they couldn't  
19 find Mr. Rizzieri to have been a member of the conspiracy --  
20 no, I suppose he could be charged with conspiracy in this  
21 indictment.

22 Well, it is very complicated. Is it necessary  
23 to go into the March -- it seems to me that going into the  
24 March proposition complicates the whole case for everybody  
25 considerably.

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789

2 MR. AMOROSA: Judge, unfortunately, it is  
3 essential for us to do that.

4 THE COURT: Why?

5 MR. AMOROSA: Because Mengrone, who will be  
6 another Government witness, will supply additional proof  
7 with respect to Rizzieri's arrest, just by way of offer of  
8 proof. Mengrone will testify that when Rizzieri was  
9 arrested by the federal authorities he had several conver-  
10 sations with the Riccos in connection with that arrest,  
11 in which the Riccos made some incriminating statements  
12 about what they had just done with Rizzieri, and whether  
13 Rizzieri was going to give them up to the law since he was  
14 just taken into custody.

15 That totally corroborates the testimony of Rossi  
16 in this respect. After Rizzieri was taken, that is,  
17 arrested, Mengrone himself became involved with the Riccos.  
18 So it's essential -- it certainly is a foundation, an  
19 essential foundation for the testimony of Mengrone. If  
20 we were precluded from proving that Rizzieri was arrested  
21 through Ferrarone, who can testify to direct personal  
22 knowledge, Mengrone's testimony we would have to eliminate  
23 half of -- not half, but we would have to eliminate a  
24 substantial portion of Mengrone's testimony.

25 We want this to come in, that is, the March



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790

2 possession, the one on which Rizzieri was arrested, in  
3 furtherance of the conspiracy, obviously, against everyone,  
4 and we are corroborating it -- corroborating Ricco's partic-  
5 ipation in the conspiracy as to that possession in March  
6 by Rizzieri through Mengrone, who will be able to tell us  
7 the Ricco side of the story when Rizzieri was arrested,  
8 totally corroborating Rossi.

9 THE COURT: All right. Let's go ahead and see  
10 what comes up.

11 MR. GOLDBERGER: Just one last point for the  
12 record, Judge.

13 I am more concerned, very frankly, with the  
14 November or December, the late 1972 transaction with  
15 Rizzieri, because it's clear from Rossi's testimony that  
16 Rossi and Rizzieri were partners in getting drugs from  
17 the Riccos during that period of time.

18 If Mr. Jacobs, Mr. Rizzieri's counsel, is going to  
19 admit the truth of these transactions, I certainly have an  
20 antagonistic defense. If he was going to say that it  
21 didn't take place, Judge, fine, there is no antagonistic  
22 defense, but --

23 THE COURT: I understand.

24 Mr. Jacobs, are you going to admit the truth of  
25 transactions on which Mr. Rizzieri has not pleaded guilty?

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791

2 MR. JACOBS: Sure.

3 MR. AMOROSA: That is the charge in the indictment.

4 I am shocked at Mr. Jacobs that he is going to admit that  
5 Rizzieri engaged in actually what this grand jury charged.

6 MR. JACOBS: Firstly, your Honor, I will answer  
7 directly as to the February transaction: Positively yes.  
8 As to the --

9 THE COURT: Although he has not pleaded guilty  
10 to that?

11 MR. JACOBS: Positively, your Honor. If the  
12 Government wants to go ahead and indict him tomorrow on  
13 that --

14 THE COURT: How are you going to be able to  
15 claim that he was -- that he pleaded guilty to that?

16 MR. JACOBS: I won't, your Honor, but I'm not  
17 going to argue with Mr. Ferrarone that Rizzieri was there.

18 THE COURT: I didn't mean to say you were going  
19 to argue with him. You said you were going to argue at one  
20 time to the jury that he pleaded guilty?

21 MR. JACOBS: In my summation, I will argue that  
22 he made these transactions.

23 THE COURT: You understand, though, that you will  
24 of course argue only within the facts as they are, that  
25 is, if he pleaded guilty to the March transaction, that's



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Rossi-recross

792

2 what he pleaded guilty to.

3 MR. JACOBS: Yes. If the Government won't  
4 stipulate, I will bring in the judgment of conviction in  
5 that case, and I want the jury to know he was sentenced  
6 to ten years by Judge Judd.

7 THE COURT: Let's proceed.

8 (In open court; jury present)

9 A L B E R T R O S S I, resumed.

10 RECROSS-EXAMINATION CONTINUED

11 BY MR. GOLDBERGER:

12 MR. GOLDBERGER: May I proceed, your Honor?

13 THE COURT: You may, Mr. Goldberger.

14 Q Mr. Rossi, just so we can clear up this point,  
15 what you are now testifying to is that at Bellevue you  
16 lied to the psychiatrists to make them think that you were  
17 incompetent, that you were crazy, so you could beat your  
18 case?

19 A I don't know if I lied or conned them. I was  
20 talking.

21 Q Did you try to lie to him -- in other words,  
22 if he asked you a question you tried to answer it in such  
23 a manner that he would think that you were incompetent  
24 or you were crazy, that sort of thing?

25 A I would imagine I did, yes.

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Ferrarone-direct

827

Q Directing your attention to November of 1972, Agent Ferrarone, did there come a time when you acted as an undercover agent for the Drug Enforcement Administration?

A Yes, sir.

Q In the course of your work in November, did you pose as a wholesale buyer of heroin?

A Yes, I did.

Q When was that, if you can remember?

A It was on November 22, 1972. It was about 7:30 in the evening.

Q Could you tell the Court and the jury what happened?

A Earlier that day I had made arrangements to purchase --

MR. JACOBS: Objection to what arrangements he made.

THE COURT: Overruled.

A I had made arrangements to purchase a one-half a kilogram of heroin from Angiolillo. The arrangements consisted of my driving a Government car to a preselected area which was a service road which is just off the Cross-Bronx Expressway. It's actually in the area of what they call the Hill Grant circle.

The service road runs parallel to the Cross-Bronx



1 8 rkmch Ferrarone-direct 828

2 Expressway and the we picked out is a bank, Dollar  
3 Savings Bank.

4 I was to drive my car there, a Government car,  
5 an undercover car, park it. I provided the first four  
6 digits of the license plate and the make of the car in  
7 advance --

8 Q Your car?

9 A Yes, the Government car. I was to park it, get  
10 out of the car and leave the driver's side window open.  
11 The agreed-upon price for this purchase of heroin was the  
12 half-kilo, \$18,000.

13 At 7:30 I drove to that service road which I  
14 just described. I was with a Government informant. I  
15 got out of the car. I left it double-parked next to the  
16 Dollar Savings Bank and I left the driver's side window  
17 open, and I walked several car-lengths behind the car and  
18 stood there on the sidewalk.

19 About ten minutes after I had been there, I observed  
20 a blue Ford, a new car for that time, so it would have  
21 been a 1972 blue Ford, and I saw it drive by, slow down,  
22 then pick up speed and drive off.

23 I did observe Peter Angiolillo on the driver's  
24 side of that car. I didn't at that time see who the driver  
25 was.

9 rkmch

Ferrarone-direct

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1  
2 About a minute later the car came back around  
3 and parked several car-lengths in front of me, in front of  
4 the Government car. Then I saw Peter Angiolillo get out  
5 of the passenger side of the car and he was carrying a bag.  
6 He walked over to the Government car, leaned into the  
7 driver's side window and put the bag on the floor of the  
8 back seat.

9 As this was going on, I was walking up to the car.

10 THE COURT: To your car?

11 THE WITNESS: Yes, to the Government car.

12 A (Continuing) I walked up to the Government car  
13 and Angiolillo was walking back to the blue Ford Torino.  
14 As that was happening I got a good glimpse of the license  
15 plate of the blue Ford Torino and memorized that plate.  
16 I got into the Government car and reached in the back  
17 seat and I removed the bag that I saw Angiolillo place  
18 in there.

19 Earlier that day, I had searched the car and  
20 made sure there was nothing inside the car at all.

21 Q This is the Government vehicle?

22 A Yes, that is right.

23 I also searched the Government informant before  
24 we went on this.

25 I opened up the bag and I removed a clear plastic



1 10 rkmch

Ferrarone-direct

830

2 bag and I checked it for the weight and to see if it was  
3 heroin. I could see white powder through the plastic.  
4 I put it back inside.

5 I got back out of the car and went over to the  
6 blue Torino. I had the \$18,000 on my person all along.  
7 I took the \$18,000 out and I leaned in through the  
8 passenger side of the car and I threw it on the lap of  
9 Peter Angiolillo and I did get a good look at the driver  
10 at that time.

11 Q Do you see the individual who was driving the  
12 car in the courtroom today?

13 A Yes, I do.

14 Q Will you describe what he is wearing?

15 A He has a dark suit on. Pink shirt. He has long  
16 black hair, and he is sitting in that second chair.

17 MR. JACOBS: I will agree it's the defendant  
18 Rizzieri, your Honor.

19 MR. GOLDBERGER: At this time I will object and  
20 move for the withdrawal of a juror on the basis of the  
21 objections I previously made on the record.

22 THE COURT: All right.

23 Q What happened after you threw the money into the  
24 car?

25 A I went back to the Government car and got in it

1 11 rkmch Ferrarone-direct 831  
2 and drove to a preselected area where I was debriefed by  
3 our surveillance teams. At that time my group supervisor  
4 met with me and his assistant. I ran a chemical field  
5 test on the package I had just bought and I basically told  
6 my supervisor what had happened.

7 Q Continue.

8 A From there I went down to our headquarters, which  
9 was 90 Church Street, where I weighed the evidence and I  
10 sealed it and placed it into a -- what we call a lock-seal  
11 envelope, then I put it in our safe at our headquarters.

12 (Continued on next page)  
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1/12/76  
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Ferrarone-direct

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2 Q Did there come a time when you identified the  
3 vehicle that you had seen that day?

4 A Yes. I think it was the next day I ran a check  
5 of the license plate and it came back to James Rizzieri.

6 Q You mentioned an individual named Peter Angiolillo.

7 A Yes, sir.

8 Q Was he known to you by any other name?

9 A He was known to me as Pete the Weep.

10 Q You indicated that you, after coming back to an  
11 area, after having acquired this package, you met with  
12 some other agents.

13 A Yes. I met with part of the surveillance team,  
14 with my group supervisor, and with Special Agent Fred  
15 Smith. He was his assistant.

16 Q And at that time you field-tested the --

17 A Yes, I ran a chemical field test.

18 Q What did that test indicated?

19 A It indicated the possibility of heroin.

20 Q What did you do with that package thereafter?

21 A We initialed it and then I brought it down to  
22 90 Church Street, which was our headquarters at that  
23 time, where I weighed it, sealed it, locked it up and  
24 put it away in the safe.

25 Q I show you now what has been marked as Government's



Tk 3B

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bsb-1

Ferrarone-direct

842

THE COURT: When was it?

THE WITNESS: February 8.

Q Tell the Court what happened at that time.

A Yes. Arrangements had been -- I had made arrangements earlier the day of February 8th to purchase one-eighth of a kilogram of heroin from James Rizzieri.

MR. JACOBS: Your Honor, I object to any arrangements he made unless he says he made it with Mr. Rizzieri.

THE COURT: Tell us who you made the arrangement with, who you wpoke with.

THE WITNESS: I made the arrangements through the Government informant.

MR. JACOBS: Move to strike.

THE COURT: I will allow the jury to hear that testimony for the purpose, and for the sole purpose of explaining why Mr. Ferrarone went where he went. It doesn't prove that anybody but the informant told him to do it.

MR. GOLDBERGER: We are talking about February 8, 1973, so the record is clear.

THE COURT: So I understand.

MR. GOLDBERGER: Thank you.

THE COURT: The informant told you an arrangement had been made. What did you do as a result of that?

THE WITNESS: Then I -- we went to Woods Avenue

bsb-2

Ferrarone-direct

1 in the Bronx, not far off, once again the Hugh Grant Circle,  
2 and it was about 5:30 in the evening. I waited in the  
3 Government car and about 6:00 -- 5:45, Rizzieri showed up  
4 in his ame blue Ford Torino. The Government informant  
5 spoke to him for a minute, then myself and the Government  
6 informant got into the car with Rizzieri.  
7

8 I was in the front seat with Rizzieri. He  
9 gave me almost immediately a small paper bag that was wrapped  
10 up in elastics. I opened it up.

11 Inside was a clear plastic bag containing a  
12 white powder.

13 Rizzieri asked me how I was going to test the  
14 heroin, was I going to try some myself. I said no.

15 THE COURT: Were you going to price it yourself?

16 THE WITNESS: Try it myself. I said no, that I  
17 never touched it. That I would find a junkie and  
18 have him try it. And I asked him how good it was going to  
19 be. He said to me that the heroin could take a five,  
20 which means supposedly be diluted five times.

21 He then told me that don't make the mistake  
22 some of m' other black customers make, they try to dilute  
23 it five times. He said you should only dilute it four  
24 times.

25 I then examined the package without really



bsb-3

Ferrarone-direct

opening it, just looked at it. Left it in the car, got back out and went into the Government car where I had \$3600 that was the price agreed upon for this eighth of a kilogram.

Q Where was that money located at that time?

A I had it secreted in the Government car, it was under the front seat, I believe, but I can't quite remember where it was.

It was in a little brown paper bag. I then went back and I gave the paper bag to Rizzieri. He said that --

THE COURT: You gave the paper bag with the money in it?

THE WITNESS: Right. I gave it to him and he asked me is it all there, and I said go ahead and count it, and he said no, I believe you.

I took the heroin, got back out of the car and went to the Government car.

A few minutes later the Government informant came over and then I left the area by myself. I went to a prearranged -- I will go through with his, all right?

I went to a prearranged area where I was debriefed by my group supervisor, and I ran a field test at that time and we also initiled the plastic bag.

Q What did the field test indicate?

bsb-4

Ferrarone-direct

1           A       Once again, it gave a positive indication of the  
2                   presence of heroin.  
3

4           Q       What did you do with the package after testing  
5                   it?

6           A       I then took it to our headquarters which at that  
7                   time was on 57th Street, and I weighed it, sealed it,  
8                   initialed it and put it into the evidence vault.

9           MR. SIEGEL:   Your Honor, may I ask counsel  
10                   if they are willing to enter into the same stipulation  
11                   regarding Exhibit 15 as regarding the custody of Exhibit 12?

12           THE COURT:   Have you heard the request?

13           MR. JACOBS:   I agree.

14           MR. MITCHELL:   No objection.

15           THE COURT:   All right.   It is so stipulated as  
16                   to Exhibit 15.

17                   Let's specify the contents of 15.   What is the  
18                   specific exhibit number?

19           MR. SIEGEL:   Your Honor, the stipulation is  
20                   with regard to the contents of Exhibit 13B.

21           THE COURT:   What is the exhibit number of the  
22                   contents of Exhibit 13B?

23           MR. SIEGEL:   13C, your Honor.

24           MR. AMOROSA:   The stipulation would be that 13C  
25                   was in Ferrarone's possession and in the possession of the

bsb-6

Ferrarone-direct

A Where did I get it?

Q Yes. Is this the package that you have previously indicated was handed to you?

A This looks like the package that I was describing to you.

Q How much did you pay for that package?

A \$3600.

MR. SIEGEL: At this time we would offer Government Exhibit 13C in evidence.

THE COURT: Assuming there is no objection as with the prior exhibit, it is admitted in evidence with the same ruling.

xxx

(Government Exhibit 13C was received in evidence.)

THE COURT: We will take our recess at this time.

(Recess.)

(In open court; jury present.)

THE COURT: Proceed, please.

BY MR. SIEGEL:

Q Agent Ferrarone, directing your attention to March of 1973, did there come a time when you again acted in an undercover capacity?

A Yes, sir, in March 13, 1973.

Q Did you again pose as a wholesale buyer of heroin?



Ferrarone-direct

Q Would you tell the Court when exactly this was?

THE WITNESS: Right. It was 7:30, quarter

Q Would you tell the Court what happened at that

So at 7:30 I drove to the Flaming Pit Restaurant. I first didn't see James Rizzieri, so I had the Government informant go into the restaurant and a few minutes later Rizzieri came out and got into the car with me by myself.

I asked him if because of these problems was there any reason why we couldn't continue to -- why I couldn't continue to purchase heroin from him. He said there was no problems. I said, well, if I would buy any more heroin from him, that I wanted a better grade heroin than I had been getting from him in the past.

SOUTHERN DISTRICT COURT RELOCATORS, U.S. COURTHOUSE  
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

1 bsb-8

Ferrarone-direct

2 source; that one of his sources had dried out and that he  
3 had to go to some other people and they were giving him  
4 bad heroin.

5 He said he is now going to a source in Long  
6 Island. He said, "I can make a call and get you anything  
7 you want within an hour."

8 I said I didn't want anything that night, but  
9 that I would take something the next day.

10 Rizzieri asked me what time. I says two o'clock.  
11 He asked me how much. I said I would like to buy a quarter  
12 kilogram of heroin.

13 Q Was there any discussion of price?

14 A Yes, I will get to that. And I asked him how  
15 much.

16 He said \$8500. I agreed on the price. Then  
17 we chose a location which was the American Gas Station just  
18 off the Grand Central Parkway as you head into the city, it  
19 would be on the west, westbound lane --

20 THE COURT: In Queens?

21 THE WITNESS: Yes, sir, in Queens. And there  
22 is a parking lot adjacent to the gas station and I said I  
23 would park near a phone booth in that area.

24 At that time I just shook hands with him and he  
25 got out of the car and left and I drove and spoke with



1       bsb-9

Ferrarone-driect

2       my group supervisor that night and told him what had  
3       happened.

4               And that was it.

5               Q       Did you in fact meet with James Rizzieri the  
6       next day?

7               A       Yes, sir, I did.

8               Q       About when was that?

9               A       It was two o'clock.

10              Q       What happened at that time?

11              A       I arrived in the parking lot a few minutes before  
12       two o'clock, I think it was about five to 2:00, and I parked  
13       the undercover car that I was driving right near a phone  
14       booth and as I was looking in the rear view mirror, I saw a  
15       new blue and white Buick pull right in behind me, maybe  
16       two car lengths behind me and it stopped, and I looked out  
17       the back window and I saw Rizzieri in the car with another  
18       man I didn't know at that time, Rizzieri was not driving,  
19       he was on the passenger side.

20                      I got out of the car and met him bout halfway,  
21       and I says, is every thing all right?

22                      And he pulled back his jacket and says, yes, I got  
23       it, and he had a brown paper bag stuffed in his belt.

24                      We both went to the Government car at that time.  
25       When he got into the car he handed me the package.    I



1       bsb-10

Ferrarone-direct

2       opened it up and as I opened it up he said, it is two  
3       eighths and I wanted a quarter kilogram, so that was all  
4       right, and I took out the eighth, one of them, it was a clear  
5       plastic bag.

6               I could clearly see the whitepowder through it,  
7       the white powder was spilling out all over the place,  
8       at that time I reached my hand out of the window and tapped  
9       the roof of the car and that was the prearranged signal  
10      to the surveillance agents that the arrest was to take  
11      place, and the arrest did take place at that time.

12             Q       What exactly happened at that time?

13             A       We arrested JamesRizzieri and also the driver  
14      of the car who we later identified as Peter Donovan.

15             Q       After    you arrested Mr. Rizzieri what did you  
16      do?

17             A       We searched him.   At that time right immediately  
18      on the spot we searched him and we found a sum of money  
19      which I later counted out to be about six hundred --  
20      to be \$665 in cash.

21               From that point we transported him to our head-  
22      quarters and processed him.

23             Q       What did you do with the package that you had  
24      been handed by Mr. Rizzieri?

25             A       I did what I had done with all the rest of them,

1 hsb-11

Ferrarone-driect

2 I ran a field test. I initialed it and I sealed them  
3 in an envelope and placed the envelope in a -- in the evidence  
4 vault at our headquarters.

5 Q What did the field test indicate?

6 A It indicated the possibility for the presence  
7 of heroin.

8 Q What did you do with the money which you obtained  
9 when you searched James Rizzieri at the time?

10 A I counted it and took the serial numbers off  
11 it and we ran it through other serial numbers that we had  
12 in the office.

13 Also, later on that evening we went out, myself  
14 and another agent, we located Rizzieri's car in Whitestone,  
15 Queens, and we seized it because it was used in the other  
16 deliveries, and there was \$1501 in that car also.

End 3B

1 rkb-8

Ferrarone

2 MR. AMOROSA: I certainly will do that.

3 MR. MITCHELL: I want to state the other objec-  
4 tion.

5 On the testimony of this officer as to the last  
6 transaction, the source being a place in Long Island, backed  
7 up by the fact they met in Queens, so it would be more  
8 convenient, is this another conspiracy?

9 MR. AMOROSA: As we have said already, what  
10 Mr. Rizzieri says doesn't necessarily control. Mr. Rorsi  
11 has testified on our direct case that Rizzieri told him that  
12 he continued to get goods from the Riccos subsequent to  
13 their parting of the ways.

14 THE COURT: I understand. I am not going to  
15 rule now but the question for me to rule on is whether there  
16 is enough evidence here to decide that as a matter of law  
17 there is more than one conspiracy, and of course that  
18 question will have to be determined by the Court at the end  
19 of the Government's case.

20 MR. JACOBS: The conversation between Rossi and  
21 Rizzieri, according to Rossi, was on February 5th. This  
22 is March 14, five weeks later.

23 THE COURT: I understand that.

24 You could argue all these questions at the end  
25 of the Government's case.



1 3 rkmch

Ferrarone-cross

2 A Just long enough to put the money in and take a  
3 look.

4 Q About two seconds?

5 A I couldn't give you an estimate like that. I  
6 reached in. I leaned in, I put the money in, looked at  
7 everybody and got out.

8 Q After this transaction in November, did you arrest  
9 Mr. Angiolillo?

10 A Yes, I did.

11 Q In fact, he was the informant with you in  
12 February; is that right?

13 A How could I answer that question?

14 MR. SIEGEL: Objection.

15 THE COURT: Sustained.

16 Q Mr. Angiolillo, did he tell you where these  
17 narcotics came from?

18 MR. SIEGEL: Objection.

19 THE COURT: On the night of the 22nd?

20 MR JACOBS: Yes.

21 A No, he didn't.

22 MR. SIEGEL: Objection.

23 THE COURT: I will allow testimony as to the  
24 events of that night.

25 Q Did Mr. Angiolillo tell you where Mr. Rizzieri

4 mch

Ferrarone-cross

866

go. the drugs in the February transaction?

MR. SIEGEL: I will object again on the grounds of hearsay.

MR. JACOBS: Mr. Angiolillo is named as a co-conspirator in this indictment.

THE COURT: Overruled.

Q Did he tell you where Mr. Rizzieri got the drugs on the February transaction?

A Specifically where he got them, no, sir.

Q Did he tell you who he got them from?

A No, sir, he didn't.

Q Did Mr. Angiolillo tell you on the February transaction Mr. Rizzieri went to Long Island to get the narcotics?

A Yes, sir, he did. Excuse me. He said he was told.

Q By whom?

A Mr. Rizzieri, that that is where he went to get them.

Q You arrested Mr. Rizzieri in the gas station.

Was Mr. Donovan arrested with him?

A Yes, he was.

Q Was Mr. Donovan indicted with Mr. Rizzieri in the Eastern District of New York?

MR. AMOROSA: Objection as to relevance.

1  
2 THE COURT: SUSTAINED.

3 Q Did Mr. Donovan inform you that Mr. Rizzieri got  
4 the drugs from Joseph Cimino and Eddy Castellano?

5 A That was two of the people. He gave me a few  
6 other names, also.

7 Q Did he say that Mr. Rizzieri usually got his  
8 drugs from Jimmy Cimino and Eddy Castellano?

9 A That is who he said he got it from at that time.  
10 He didn't say "usually."

11 Q He didn't say "usually"?

12 THE COURT: Let me be sure I understand this.

13 Mr. Donovan told you where he got the drugs.  
14 He told you what Rizzieri said to him about where he got the  
15 drugs?

16 THE WITNESS: Yes.

17 Q Didn't Mr. Donovan tell you he used to bring the  
18 drugs from Cimono and Castellano to Rizzieri?

19 A That is correct.

20 Q Did he tell you what period of time this was?

21 A He did give me a period of time. I don't remember  
22 the exact time he said. I don't remember the exact time  
23 period.

24 Q Did Donovan tell you that Mr. Rizzieri got the  
25 drugs from Mr. Ricco?



1 6 rkmcl.

Ferrarone-cross

2 MR. AMOROSA: Objection -- withdrawn.

3 A Yes, sir, he did tell me that.

4 Q Got these drugs, the March 14th transaction?

5 A He said the March 14th transaction he did tell me  
6 it came from Mr. Ricco.

7 THE COURT: I thought we were talking about  
8 February. Now we are talking about March?

9 MR. JACOBS: March 14th, your Honor.


10 A I remember exactly what he said.

11 THE COURT: Did your previous testimony apply  
12 to the February transaction or March transaction?

13 THE WITNESS: We seemed to be jumping around.

14 I am talking about the last seizure of the one-  
15 quarter kilogram on March 14th.

16 THE COURT: You say on that day Donovan told you  
17 that Rizzieri --

18 THE WITNESS: He said that James Rizzieri told him  
19 that he had received the heroin that day from Anthony  
20 Ricco. He used the name Tony Bragiolo. 

21 MR. GOLDBERGER: I will have to object and ask it  
22 be stricken as hearsay and that the jury disregard the  
23 statement.

24 MR. AMOROSA: We object to that.

25 THE COURT: You can't object to an objection. I

7rkmch

Ferrarone-cross

869

will rule on his objection.

If you want to argue the objection, you are free to do so.

MR. AMOROSA: We desire to argue it.

The questions were asked and the witness answered the questions.

MR. GOLDBERGER: That doesn't make them any more proper.

THE COURT: He is moving they be stricken.

MR. AMOROSA: We oppose it.

THE COURT: The motion is overruled. Mr. Goldberger's motion is overruled.

Mr. Amorosa, you don't have to oppose it. Unless you say you agree, I assume you always oppose it.

Q In your conversations with Mr. Angiolillo and Mr. Donovan, how many different sources of supply for Mr. Rizzieri in the late 1972-early 1973 period were you told of?

MR. AMOROSA: Objection.

THE COURT: Sustained.

Q Now, the conversation you had on March 13th, the night before Mr. Rizzieri's arrest, can you tell us what Mr. Rizzieri said to you when you complained about the quality of the heroin?

A He said he had a source that was drying up or dried

1 8 rkmch

Ferrarone-cross

870

2 out -- I don't remember the exact word -- and that he had  
3 to go to other sources, and sometimes when he went to these  
4 sources that they didn't give him the normal good quality  
5 that he was used to getting. He said if I didn't like the  
6 package I had gotten earlier, I should have brought it back  
7 to him and he would have given me my money back.

8 Q Is there anything more you recall with regard to  
9 that part of the conversation?

10 A Yes. He did say that he was dealing with someone  
11 and he used the words, "on Long Island," and he said he  
12 could make a phone call and go to Long Island, or he said  
13 he could make a phone call and have whatever I wanted, were  
14 the words he used, within an hour.

15 MR. JACOBS: No further questions.

16 MR. MERGER: No questions.

17 MR. MITCHELL: No questions.

18 THE COURT: Who represents Mr. Blase this  
19 afternoon?

20 MR. GOLDBERGER: I do.

21 I would assume Mr. Richman has no questions of  
22 this witness.

23 THE COURT: Let me explain, ladies and gentlemen.  
24 Mr. Richman is not here because he has the flu. He had it  
25 this morning and asked to be excused this afternoon and Mr.



1       bsb-3

Rossi-redirect

2                   THE COURT: That is not going into Mengrone's  
3 testimony.

4                   MR. AMOROSA: As to Mengrone, you are absolutely  
5 right as to that. But to get one statement from Rossi  
6 and not the response to Mengrone --

7                   THE COURT: Except we have to move along here.  
8 If you are going to put the tape in anyway, to get it all  
9 in bits and pieces seems to me to be gilding the lily.

10                  MR. JACOBS: The Government is then saying  
11 that nine months after this January ending with Rossi when  
12 Mengrone is dealing with the Riccos, they are saying it is  
13 all part of this conspiracy.

14                  MR. AMOROSA: Absolutely. Mengrone -- this  
15 conspiracy, it is our position, flowed from the beginning,  
16 from October of '71 through --

17                  THE COURT: They named the date of December '73.

18                  MR. JACOBS: Of course they did, but you know,  
19 there are a lot of --

20                  THE COURT: It is not a question that they are  
21 therefore allowed to go to that date, I simply mean I don't  
22 know why you are surprised to hear it.

23                  MR. JACOBS: The thing is this, your Honor, if  
24 the nexus of the conspiracy is -- is the Government saying  
25 the nexus of the conspiracy is the Riccos and if I can

bsb-4

Rossi-redirect

show that drugs were sold to somebody else, does that have anything to do with this? What is the nexus, is it Rossi? Rossi is out -- I mean, Rossi had nothing to do with the Mengrone situation.

MR. AMOROSA: I can explain our position.

THE COURT: Please do.

MR. AMOROSA: The Riccos are at the top. From October of '71 through about December of '72, the Riccos are distributing to Rossi and Blase and Rizzieri at that time, and they are distributing to others, one of whom being George Carrado, the defendant in this case.

In December of '72 Rossi stops taking from the Riccos, but Rizzieri continues to take up until about the time of his arrest.

THE COURT: Of his, Rizzieri's arrest?

MR. AMOROSA: Yes, in about March of 1973.

At that time the Riccos begin to distribute to Peter Mengrone, or begin their association, narcotics association with Peter Mengrone. So it is one continuous narcotics transaction, one continuous conspiracy. Some defendants may not --

THE COURT: It sounds like it could be spoke to me.

MR. MERBERG: How can it be the same conspiracy,

1       bsb-5

Rossi-redirect

2       your Honor --

3               THE COURT: Suppose I was the central man and did  
4       business with each one of you and you weren't connected  
5       with each other? We will have to hear it and decide  
6       when we have the facts.

7               MR. GOLDBERGER: One other point, your Honor --

8               THE COURT: I must say, Mr. Amorosa, I don't  
9       see that that makes it a continuous conspiracy in the  
10      sense that it is a non-spoke conspiracy. What is the name,  
11      Kotteakos, you could call that continuous too. It isn't  
12      a question of whether chronologically one man continues to  
13      do something all the way through and there is never a period  
14      of dead time, if that is your implication.

15              The question is whether -- let's say, Mr.  
16      Rizzier, for example, doing business with Mr. Ricco, could  
17      reasonably have contemplated that the Riccos were going to  
18      be doing business with other people and it would all be  
19      one mess of pottage. I am not in a position to judge that  
20      at the moment, but I certainly don't want to let my -- to  
21      let any silence of mine lead you to believe that I think  
22      it is as simple as you think it is.

23              MR. GOLDBERGER: Judge, I raised that first  
24      point because we are going to be getting into Ferrone's  
25      testimony --



1 bsb-6

Rossi-redirect

2 THE COURT: I don't mean to make light of  
3 that first point. Let me ask you this, Mr. Jacobs, you  
4 say if Ferrone testifies you are going to admit mechanically  
5 -- how is this admission going to occur in this trial  
6 mechanically? Are you going to get up and --

7 MR. JACOBS: I am going to ask Mr. Ferrone leading  
8 questions about the conversations --

9 THE COURT: Which will imply that you are not  
10 disputing that they occurred?

11 MR. JACOBS: But that Ferrone was told that  
12 these narocitics came from other places other than the Riccos--

13 THE COURT: Other than the Riccos?

14 MR. JACOBS: That's right.

15 THE COURT: That doesn't seem to be inconsistent  
16 with the Riccos then.

17 MR. JACOBS: I am also --

18 THE COURT: If he says, yes, I know it came from  
19 the Riccos, that is another matter.

20 MR. JACOBS: I am going to have -- to prove that  
21 my client was arrested in March, he pleaded guilty to sales  
22 and was sentenced to ten years imprisonment and is serving  
23 the ten years right now.

24 I am going to argue to the jury in my summation  
25 that my client did these things in February and March of

bsb-7

Rossi-redirect

1973 and he has been punished for that, and it has nothing to do with this case.

MR. GOLDBERGER: Following that to its logical conclusion, I don't think there is anybody in this room that can say that that isn't going to prejudice the other defendants in this case in regard to getting a fair trial from this jury once Rizzieri has admitted that he made three sales in February and March of 1973. I don't see how it is possible for the jury to decide anything except guilt in regard to the other defendants in respect to that.

THE COURT: I think it is possible. Suppose somebody would be acquitted, then what would you say?

MR. GOLDBERGER: I would say I was wrong, your Honor.

MR. RICHMAN: There is another issue on an entirely different subject. If we are to accept Mr. Rossi's testimony that he did testify as with reference to Blase back in April of '74, the beginning of his cooperation, I raise the issue now of a lack of a speedy trial.

I would point out to the Court that the mere fact that the Government decides not to indict until a later point does not provide them with the opportunity to indict when they want, so to say, and thereby deprive the defendant of a speedy trial.

By Direction of the Court  
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RA-47

1551

1 rkb-1

2 United States of America

3 vs.

75 Cr. 411

4 Angelo Ricco, et al.

6 New York, New York  
January 19, 1976 - 10:00 A.M.

8 (Trial resumed.)

10 Court Opinion Severing Blase

11 (In the robing room.)

12 THE COURT: I haven't ruled on some of the  
13 motions. I have motions pending with regard to Carrado ,  
14 Rizzieri and Blaze, as I recall it. Motions with regard  
15 to Carrado and Rizzieri for judgment of acquittal are  
16 denied and the motion of Blaze for judgment of acquittal  
17 is denied.

18 The motion with regard to the infirmity of the  
19 grand jury proceedings is deferred.

20 The motion for a severance, I am prepared to  
21 rule on favorably to Blase, because I do believe that  
22 the overlapping of events of the limited nature of his  
23 participation and so on is such that it could be considered  
24 prejudicial to have been tried with this group of defendants.  
25



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1552

2                   However, I say I am prepared to do that.  
3       I think you may wish, Mr. Richman, to consider the matter  
4       with Mr. Blase and determine whether he will really be  
5       better off to be tried by himself in a case in which  
6       there will be sharp and precise evidence against him, or  
7       to take his chances on this trial in which he might get  
8       lost in the shuffle.

9                   That is entirely up to you.

10                  MR. RICHMAN: I have discussed this matter  
11       with Mr. Blase.

12                  THE COURT: I will say I would expect to go  
13       ahead promptly with a new trial against Mr. Blase if the  
14       Government would wish to do so. I assume it would only  
15       take a day or so. I guess the only witnesses you have  
16       are Rossi and McMillan, and even Mr. Richman's searching  
17       cross-examination of Mr. Rossi will not take that long  
18       because it is all out in the open.

19                  MR. RICHMAN: May I speak with my client.

20                  THE COURT: Yes.

21                  MR. MERBERG: I have another question. I  
22       made a motion originally at the side bar with regard to  
23       the New Jersey transaction that allegedly involved DiSalvo  
24       and at that time your Honor said "I will reserve my ruling  
25       until a later date."

By Direction of the Court  
Transcript furnished pursuant to  
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during or after trial, and not

RA-49

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1813

2 United States of America

3 vs.

75 Cr.411

4 Angelo Ricco, et al.

6 New York, New York.

7 January 20, 1976 - 10:00 A.M.

8 Eastern District Arrest and Indictment

9 (Trial resumed.)

10 (In the robing room.)

11 MR. JACOBS: Your Honor, as I told you, one of  
12 the arguments I intend making to the jury is that my client  
13 was completely out of the picture as of March 14, --

14 THE COURT: I am quite aware of it.

15 MR. JACOBS: -- 1973, when he was arrested,  
16 and has been in jail ever since.

17 There has been some question back and forth  
18 as to whether he has been in jail.

19 Mr. Amorosa tells me this morning if my client  
20 swears under oath out of the presence of the jury that he  
21 has been incarcerated since March 14, the Government would  
22 then stipulate before the jury, but he wishes to argue to  
23 your Honor that it has no relevance and I submit it is  
24 relevant.  
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2 THE COURT: I will be glad to hear what you  
3 have to say.

4 MR. AMOROSA: The fact that Rizzieri was in-  
5 carcerated for this period of time, from the time of  
6 his arrest in March, isn't inconsistent with the Governmnet's  
7 proof one bit in this case. We intend to convict Rizzieri  
8 for conspiracy with respect to his behavior prior to March.  
9 The fact he has been in jail since March, what does it  
10 prove?

11 MR. JACOBS: I claim it proves if anything, it is  
12 a jury question, of course, but that he should not be held  
13 for any acts, and there were many acts proved by the Govern-  
14 ment after March 14.

15 THE COURT: 1973?

16 MR. JACOBS: Yes.

17 MR. AMOROSA: Your Honor can charge the jury  
18 that. I will tellthe jury that it is not our contention  
19 that he did anything and there is no proof he did anything  
20 after March of 1973, except that he got a message to his  
21 girl who conveyed it to Mengrone, who conveyed it to  
22 the Riccos that he would stand up in jail and not implicate  
23 the Riccos.

24 It is not really total abandonment here.

25 THE COURT: That is a jury question.



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2 I think the man is entitled to put whatever arguments he  
3 can before the jury. I disagree with you in terms of  
4 logic rather than relevance. It is not a very heavy  
5 argument, but you are perfectly free to knock it down.

6 MR. JACOBS: I would like to urge again the  
7 further point. The trial before Judge Cannella, two  
8 defendants were arrested two years ago at an airport, with  
9 narcotics. They were charged with possession of narcotics,  
10 pleaded guilty and received ten year sentences. Two years  
11 later the Government charged them in a conspiracy case.  
12 Their defense in the case is, they admit to the possession  
13 but they state they are not part of the conspiracy, have  
14 nothing to do with the conspiracy.

15 Judge Cannella has admitted into the record  
16 the fact they pleaded guilty and received ten year sentences.

17 What I see in this case, the jury may well  
18 believe Albert Rossi and if they believe him, there is no one  
19 else aside from the agents that has testified to narcotic  
20 dealings with my client.

21 What we are faced with here, the jury has  
22 heard the February sale and the March sale, no doubt about  
23 it. If I were a juror sitting in this case, even if I  
24 disbelieved Al Rossi, I would say wait a second, this guy  
25 sold narcotics in February and March.

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2 How can we acquit this man even if we dis-  
3 believe Rossi?

4 They don't know that he was punished for the  
5 March sale and I submit, your Honor, we can't be technical  
6 and say, well, he is not charged with the March sale in  
7 this case, he is not charged with the February sale. I  
8 don't think the jury is like that. They are practical people  
9 and they heard this man sold narcotics in February and March,  
10 which is uncontroverted, this jury is going to convict him  
11 whether they believe Albert Rossi or not.

12 THE COURT: I don't see that his having  
13 pleaded guilty to the March sale makes any difference.  
14 Either the jury is going to obey the instructions that  
15 they can't convict because of the February and March  
16 sales, that is, that they are not part of the offense  
17 charged in this case, but if you are right they would  
18 disregard the instructions except if they knew he had  
19 already been punished for the March sale, then it seems  
20 to me that you are suggesting that you would be able to  
21 make a plea to the jury that since he was punished for  
22 the March sale, he shall not be convicted in this case  
23 and I don't think that is any more appropriate.

24 MR. JACOBS: Unless they are convinced beyond  
25 a reasonable doubt that the February and March sales are

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connected with this conspiracy.

THE COURT: They have to be convinced of that in any event.

I do believe you may appoint, and I have said this before, with regard to whether it is improper to cover up Mr. Rizzieri's affairs and present them in different segments as they have been, and that has been raised during the course of the trial and I don't know whether that is good faith on the part of the Government or deliberate delay or the facts as to justify dismissal on some other ground at some other time, but I can't buy the theory that you have impressed.

MR. JACOBS: We will have a stipulation he has been incarcerated since March 1973.

MR. MERBERG: I would like to object with respect to Mr. Jacobs' argument with regard to Mr. Rizzieri because at least at one point there is evidence that Rizzieri and DiSalvo were present in some type of transaction or knew each other and were in that area.

As I understand it, the argument by Mr. Jacobs will be that Rizzieri is guilty and involved and already received his punishment.

THE COURT: No.

MR. JACOBS: It will not be in the record and I



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2 can't argue that.

3 MR. MERBERG: I don't believe there is any  
4 evidence he has admitted his guilt as to the other sales.

5 THE COURT: He hasn't admitted his guilt as to  
6 anything in particular. It will come before the jury  
7 that he was in jail at a certain period of time and I  
8 gather Mr. Jacobs hopes to argue, at least he couldnot have  
9 committed the offenses that he is alleged to have com-  
10 mitted if he was in jail at the time.

11 MR. MERBERG: As I understand it, the stipulation  
12 does not encompass that it is a narcotics conviction, only  
13 that he is incarcerated.

14 THE COURT: That is right.

15 MR. MERBERG: That would preclude him from  
16 arguing on an unrelated narcotics case or some narcotics  
17 case --

18 THE COURT: I don't think in light of my last  
19 ruling it is to his advantage to argue it is narcotics.

20 MR. MERBERG: I just wanted to be sure.

21 THE COURT: Would you call in Mr. Rizzieri,  
22 please.

23 (Defendant Rizzieri enters the robing room.)

24 MR. GOLDBERGER: May I have one minute with  
25 Mr. Jacobs and Mr. Rizzieri, Judge?

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2 THE COURT: All right, just a minute.

3 (Pause.)

4 MR. JACOBS: We are ready to proceed.

5 J A M E S R I Z Z I E R I sworn.

6 THE COURT: Mr. Jacobs, do you want to ask  
7 the questions?

8 MR. JACOBS: Yes.

9 BY MR. JACOBS:

10 Q Mr. Rizzieri, were you arrested on March 14,  
11 1973?

12 A Yes, sir.

13 Q Was your bail fixed at \$75,000?

14 A Originally it was fixed at \$250,000 in the  
15 Southern District of New York. Then they found out they  
16 made the complaint in the wrong district and they reindicted  
17 me in the Eastern District. First I got indicted in  
18 front of Judge Constantino at \$35,000. The next day I was  
19 brought up in front of Judge Judd, and he set the bail at  
20 \$100,000.

21 Q Did you ever make bail?

22 A Never.

23 Q Were you sentenced in July 1973?

24 A To ten years.

25 Q Have you been continuously incarcerated in

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1820

2 Federal custody since March 14, 1973?

3 A Yes, sir.

4 THE COURT: Any questions, Mr. Amorosa?

5 MR. AMOROSA: No, sir.

6 THE COURT: Thank you, sir.

7 (Defendant Rizzieri leaves the robing room.)

8 THE COURT: I would like to instruct you I  
9 don't want interruptions during the course of anybody's  
10 summation. If there is a problem, at the end of that summa-  
11 tion, raise your hand and we will come into the robing room  
12 and if there is some correction necessary, I wi-ll make it.

13 I am also instructing counsel to stay away  
14 from telling the jury what the law is, not because I am  
15 concerned about your ability to do it, but because I know  
16 that counsel begin to quibble with each other whether the  
17 thing is phrased properly, and I don't want any quibbling  
18 during summations.

19 MR. GOLDBERGER: If counsel for the Government  
20 or one of the counsel for the defendants goes way overboard  
21 and starts making outrageous statements, will the Court  
22 stop him on its own?

23 THE COURT: Yes, I will.

24 MR. BRACKLEY: I don't intend to stand and argue  
25 any law to the jury, but in evaluating certain facts and



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